NO. 24117

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

STATE OF HAWAIʻI, Plaintiff-Appellee, v.
CARY HUGO JANSSON, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(Cr. No. 00-01-0174)

SUMMARY DISPOSITION ORDER
(By: Burns, C.J., Watanabe, and Lim, JJ.)

In this appeal, Defendant-Appellant Cary Hugo Jansson (Jansson) contends that the Circuit Court of the Fifth Circuit (the circuit court) reversibly erred when it refused to allow him to withdraw his guilty plea to the offense of Criminal Property Damage in the Second Degree (CP2), a violation of Hawaii Revised Statutes § 708-821(1)(b) (Supp. 2001).[1] We agree.

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[1] Hawaii Revised Statutes (HRS) § 708-821(b) (Supp. 2001) provides as follows:

> **Criminal property damage in the second degree.**
> (1) A person commits the offense of criminal property damage in the second degree if:
>
> . . . .
>
> (b) The person intentionally damages the property of another, without the other's consent, in an amount exceeding $1,500.
>
> (2) Criminal property damage in the second degree is a class C felony.

Jansson contends that his guilty plea was not made knowingly, voluntarily, or intelligently because (1) he was never advised that Plaintiff-Appellee State of Hawai‘i (the State) had the burden of proving that the amount of damages he caused to a First Hawaiian Bank automated teller machine (ATM) exceeded $1,500 and that if the amount of damages was less, he could be convicted of a misdemeanor; (2) he was misled into believing that the amount of damages caused to the ATM was substantially higher than the actual repair costs; and (3) in violation of the principles set forth in State v. Pone, 78 Hawai‘i 262, 892 P.2d 455 (1995) (holding that the "intentional" state of mind applies to all elements of the criminal property damage in the fourth degree offense) and State v. Mitchell, 88 Hawai‘i 216, 965 P.2d 149 (1998) (holding that the "intentional" state of mind applies to all elements of the offense of theft in the second degree, including the value of the property stolen), he was never informed of the specific elements of the CP2 offense and that the State was required to prove, beyond a reasonable doubt, that Jansson acted with the intentional state of mind as to all elements of CP2. More particularly, he was never informed that the State had to prove, beyond a reasonable doubt, that Jansson "must have intended that the damages exceed $1500." (Emphasis added.)

We review Jansson's claim that his plea was not made knowingly, intelligently, or voluntarily "*de novo*, i.e., according to the right/wrong standard, based upon an examination of the entire record." State v. Merino, 81 Hawai'i 198, 225, 915 P.2d 672, 699 (1996). Moreover, the Hawai'i Supreme Court has instructed that where a defendant's request to withdraw a guilty plea is made prior to the imposition of sentence, as is the case here, "a more liberal approach is to be taken, and the motion should be granted if the defendant has presented a fair and just reason for his request and the [prosecution] has not relied upon the guilty plea to its substantial prejudice." State v. Jim, 58 Haw. 574, 576, 574 P.2d 521, 523 (1978). Reviewing the record according to the foregoing standards, we agree that Jansson should have been allowed to withdraw his guilty plea.

The record indicates that although Jansson appeared pro se for his arraignment and preliminary hearings, the District Court of the Fifth Circuit (the district court)[2] failed to engage Jansson in the extensive, on-the-record colloquy that is required by State v. Dickson, 4 Haw. App. 614, 619-20, 673 P.2d 1036, 1041-42 (1983), to assure that Jansson's waiver of the presence of counsel was knowing, voluntary, and intelligent. Additionally, because Jansson waived the oral reading of the

[2/] The Honorable Clifford Nakea presided at the arraignment and preliminary hearings.

complaint and his right to a preliminary hearing, he was never informed in the district court of the nature of the CP2 charge and the evidence against him. Finally, when Jansson was bound over to the circuit court for trial and thereafter entered a guilty plea, the circuit court[3] failed to comply with the requirements of Carvalho v. Olim, 55 Haw. 336, 344-45, 519 P.2d 892, 897-98 (1974), in accepting Jansson's guilty plea. Specifically, the circuit court failed to inform Jansson in open court that the intentional state of mind was applicable to each element of the CP2 offense, including the amount of damages requirement. The circuit court also failed to question Jansson to make sure that he was aware of possible defenses to CP2.

In light of the totality of these circumstances, we conclude that Jansson presented "a fair and just reason for his request" to withdraw his guilty plea. There is no indication in the record that the State relied on Jansson's guilty plea to its substantial prejudice. Therefore, Jansson should have been allowed to withdraw his guilty plea.

Accordingly, we: (1) vacate the "Findings of Fact, Conclusions of Law and Order Denying [Jansson's] Motion to Withdraw Guilty Plea[,]" entered by the circuit court on January 3, 2001; (2) vacate the Amended Judgment, entered on

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[3/] The Honorable George Masuoka presided at the entry of plea hearing.

April 5, 2001, that convicted and sentenced Jansson for the CP2 offense; (3) vacate the Guilty Plea entered by Jansson in open court and in writing on September 12, 2000; and (4) remand this case for further proceedings consistent with this opinion.

DATED: Honolulu, Hawai‘i, September 19, 2002.

On the briefs:

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